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# LEGAL JUSTICE PERSPECTIVE IN INFLUENCING LEGAL CHANGES RELATED TO JOINT PROPERTY IN MIXED MARRIAGES

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**Abstrak**

Harta bersama dalam konteks perkawinan campuran merupakan isu hukum yang kompleks dalam sistem hukum Indonesia yang pluralistik. Perkawinan campuran yang melibatkan pasangan dengan perbedaan kewarganegaraan, budaya, atau agama menimbulkan berbagai tantangan hukum, terutama mengenai kepemilikan tanah, hak waris, dan pembagian aset setelah perceraian. Permasalahan ini sering kali menciptakan ketidakpastian hukum dan potensi ketidakadilan bagi pasangan, khususnya pihak asing yang kerap mengalami pembatasan hak kepemilikan. Penelitian ini bertujuan untuk menganalisis bagaimana prinsip keadilan dapat diterapkan dalam pengaturan harta bersama dalam perkawinan campuran, dengan mempertimbangkan perbedaan sistem hukum negara asal pasangan dan kebutuhan untuk melindungi hak individu secara seimbang. Metode yang digunakan adalah pendekatan hukum normatif, dengan fokus pada analisis norma hukum perdata internasional yang berlaku. Data diperoleh melalui studi literatur terhadap undang-undang, peraturan, dan yurisprudensi, serta wawancara mendalam dan analisis kasus untuk menggali aspek teoritis dan praktis dari penerapan hukum. Hasil penelitian menunjukkan bahwa perbedaan sistem hukum antarnegara sering kali menimbulkan ketidakadilan dalam kepemilikan dan pembagian harta. Pembatasan terhadap pasangan asing menjadi hambatan utama. Oleh karena itu, diperlukan harmonisasi hukum perdata internasional, penerapan perjanjian perkawinan yang adaptif terhadap globalisasi, serta reformasi hukum yang inklusif untuk menjamin keadilan dan kesetaraan hak dalam perkawinan campuran.

Kata Kunci: *Hukum, Hukum Perdata Internasional, Keadilan Hukum, Perkawinan Campuran, Harta Bersama.*

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Abstract

Joint property in the context of mixed marriages represents a complex legal issue within Indonesia's pluralistic legal system. Mixed marriages involving spouses of different nationalities, cultures, or religions pose significant legal challenges, particularly concerning land ownership, inheritance rights, and the division of assets after divorce. These challenges often create legal uncertainty and potential injustices, especially for foreign spouses who face ownership restrictions. This study aims to examine how principles of justice can be applied to regulate joint property in mixed marriages by considering differences in the legal systems of each spouse's home country and ensuring a balanced protection of individual rights. The research employs a normative legal approach, focusing on the analysis of applicable international private law norms. Data were collected through literature studies of legislation, regulations, and jurisprudence, as well as in-depth interviews and case analyses to gain both theoretical and practical insights into legal implementation. The results reveal that differences between legal systems frequently lead to inequities in property ownership and division. Discriminatory restrictions on foreign spouses pose significant barriers. Therefore, harmonisation of international private law, adaptive prenuptial agreements, and inclusive legal reforms are essential to ensuring justice and equal rights in mixed marriages.

Keywords: Law, Private International Law, Legal Justice, Mixed Marriage, Joint Property.

## INTRODUCTION

Joint property within the context of family law represents a crucial and complex legal issue, particularly in Indonesia, where legal pluralism intersects with cultural diversity. The concept of joint property refers to assets acquired during marriage that are legally recognized as shared property between spouses (Sutini & Dewi, 2021). In mixed marriages—between individuals of different nationalities, religions, or cultural backgrounds—this issue becomes even more intricate due to discrepancies between legal systems. For example, Indonesian law prohibits foreign nationals from owning land, granting only rights of use. This restriction often leads to ownership conflicts when property is acquired during marriage (Hetharie, 2019). These legal complexities have both academic and practical implications. From an academic perspective, they require rigorous analysis within the frameworks of private international law and family law. Practically, they affect thousands of couples in Indonesia, often placing one



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party, particularly Indonesian women, in a vulnerable legal position during divorce or inheritance disputes. This issue is not merely legal but also deeply social, involving gender dynamics, cultural norms, and property rights, making it a pressing area for both scholarly inquiry and policy reform.

Previous studies have examined various aspects of joint property within international family law, yet significant gaps remain. McClean (2023) identified challenges related to jurisdictional transfer and legal inconsistencies in international family cases, emphasizing the need for coherent mechanisms to harmonize local and international legal principles. Likewise, Gama (1998) highlighted difficulties in reconciling property division laws between different legal systems, while Nuraudya and Haryanti (2017) explored the influence of social norms on marital property relations in Indonesian society. However, these studies tend to address legal and social dimensions in isolation and often lack integrative analyses that focus on how joint property regulations operate within mixed marriages under Indonesia's plural legal system. Furthermore, the application of international civil law principles to property disputes in mixed marriages remains underexplored. There is a notable absence of research adopting a justice-based lens that integrates national and international legal frameworks. This gap underscores the need for research that combines normative legal analysis with socio-legal perspectives to address contemporary challenges in joint property disputes arising from mixed marriages.

This study aims to fill these gaps by examining how principles of legal justice can be applied to regulate joint property in mixed marriages within Indonesia. Specifically, it investigates the intersection between Indonesian national family law and international civil law, with a focus on developing mechanisms that ensure fair ownership and distribution of property in mixed marriages. The research explores how differences in legal systems—such as restrictions on land ownership for foreign spouses—shape joint property arrangements, and how legal reform or harmonization could lead to more equitable outcomes. Additionally, the study seeks to identify practical strategies for couples and legal practitioners to prevent or mitigate disputes, including the use of adaptive prenuptial agreements and the adoption of relevant international conventions. By integrating doctrinal legal analysis with socio-legal perspectives, this research aims to contribute theoretically to international family law scholarship while offering practical recommendations for legal reform and implementation in Indonesia.

The central argument of this study is that the lack of harmonization between Indonesian national law and international legal systems is a



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primary factor driving joint property disputes in mixed marriages. The working hypothesis posits that integrating principles of justice derived from international civil law into Indonesia's legal framework will enable more balanced and equitable regulation of joint property. Specifically, it hypothesizes that harmonization through legal reform—such as clearer regulations on property ownership for mixed couples and the formal recognition of adaptive prenuptial agreements—will reduce legal uncertainty and safeguard the rights of both spouses. Furthermore, the research argues that legal clarity has a direct causal relationship with social equity: when legal frameworks are harmonized, the risks of gender- and citizenship-based inequalities in property division are significantly reduced. This hypothesis will be examined through normative legal analysis and comparative legal approaches, supported by doctrinal sources, case studies, and socio-legal interpretations.

## LITERATURE REVIEW

### Community Property

Within a marriage, assets are automatically accumulated as community property, which are typically acquired through the joint efforts of the husband and wife. These assets serve as one of the key foundations for building a harmonious and stable family, as financial security enables couples to meet their daily and long-term needs. Community property refers to assets acquired during the course of marriage, excluding inheritance or gifts, meaning they are obtained either through joint or individual efforts within the marital bond (Susanto, 2011). Marriage Law No. 1 of 1974 defines joint property as property acquired during the marriage, starting from the date of marriage until it is dissolved due to divorce or death. This legal definition distinguishes joint property from personal property—assets brought into the marriage by each spouse or acquired through gifts or inheritance—which remain under the full control of each individual unless otherwise agreed (Agusta, Madjid, & Aprilianda, 2025; Amin & Muhdi, 2021; Rosidini et al., 2022; Shi, 2022).

### Mixed Marriage

The term "mixed marriage" refers to marriages between individuals from different backgrounds, such as nationality, race, religion, or culture. In Indonesia, it specifically denotes a marriage between an Indonesian citizen and a foreign national. Such marriages are governed by Law No. 1 of 1974 on Marriage and its implementing regulations. Article 57 of the Marriage Law defines mixed marriages as unions between individuals who are subject to different legal systems, either due to differences in citizenship or religion. Consequently, prospective couples entering mixed marriages



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must comply with both their respective national laws and Indonesian legal requirements (Akbar et al., 2024). Before the enactment of Law No. 1 of 1974, mixed marriages were regulated by the Koninklijk Besluit of December 29, 1896, known as the Regeling op de Gemengde Huwelijken (Staatsblad 1898 No. 158), which defined mixed marriages as unions between people in Indonesia who are subject to different legal systems.

**Private International Law**

Private International Law is a branch of law governing legal relationships that involve foreign elements. It includes rules that determine court jurisdiction, applicable law, and the recognition and enforcement of foreign judgments (Haidar et al., 2023). Its primary function is to resolve legal conflicts that arise in civil cases with cross-border elements, such as international treaties, mixed marriages, and transnational commercial disputes (Bedner et al., 2012). It plays a critical role in determining which legal system and judicial body have authority over a case (Auliya, Daulay, & Elida, 2025; Subagiyo & Tedjawati, 2022; Suraya, Khisni, & Chalim, 2021). Scholarly debates continue regarding the scope of Private International Law, but fundamentally, it serves as the legal mechanism through which courts address disputes that span multiple legal systems (Megiani, Kasim, & Mustika, 2023).

**The Hague Convention 1968**

The issue of international divorce was addressed during the Eleventh Conference on Private International Law held in The Hague from 7 to 26 October 1968, where a Convention on the Recognition of Divorces and Legal Separations was adopted. This conference marked Indonesia's first participation, albeit as an observer (Megiani et al., 2023). The adoption of the Convention followed intense debate, particularly because some member states, such as Italy and Spain, did not recognize divorce, while others, like Israel, applied more liberal divorce systems, including the talaq system (Ananda Putra & Wagian, 2021; Paradikma & Jaelani, 2024; Prayantama, Anshari, & Rachmat, 2025; Shi, 2022; Wibawa, Gelgel, & Sarjana, 2019).

The primary objective of the Hague Convention was to avoid "crippled divorces" and facilitate the right to remarry. To achieve this, the Convention introduced the "Convention Simple" system, which provided a flexible and internationally acceptable framework for recognizing divorces and legal separations (Bhattarai et al., 2022; Glazer-Eytan & García-Arenal, 2020). Unlike rigid jurisdictional frameworks that require local courts to issue divorce decrees, the Convention emphasized mutual recognition: participating states were required to recognize divorce decisions issued by competent authorities in other member states, as long

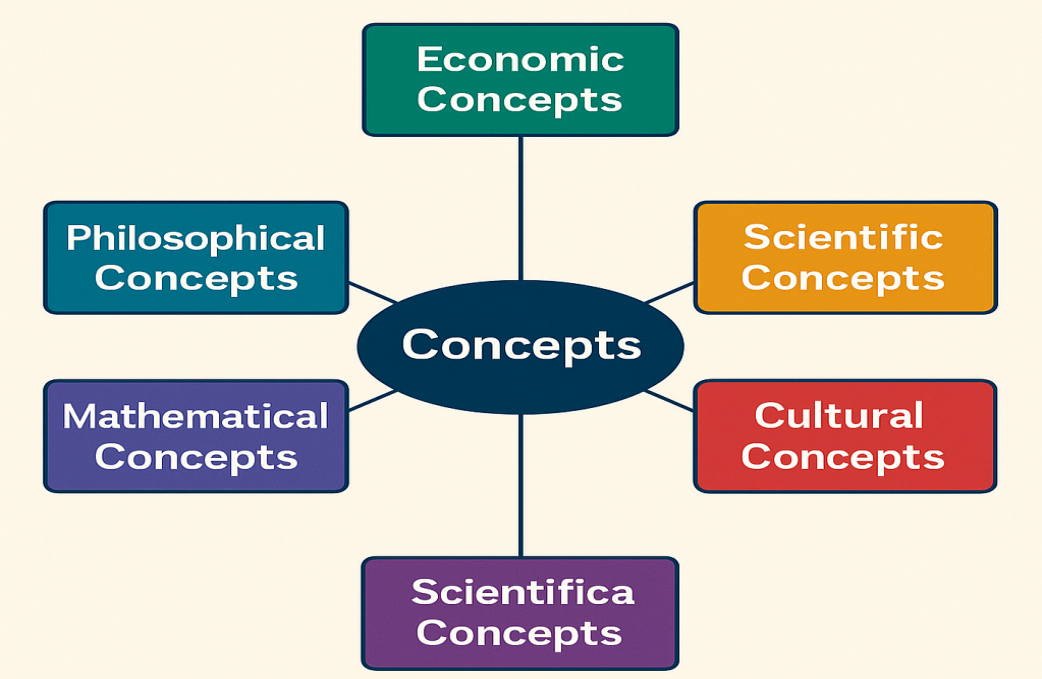


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as those decisions were based on jurisdictional criteria established within the Convention (Akter et al., 2022; Phiri et al., 2023; Zuraida et al., 2020). This approach created greater legal certainty for couples in cross-border marriages, ensuring that divorce judgments would be recognized across jurisdictions.

To maximize ratification, the Convention deliberately limited its scope, excluding contentious issues such as spousal maintenance, child support, and educational responsibilities for children (Andriani, Santoso, & Yanto, 2020; Awang et al., 2022; Lowe, Joof, & Rojas, 2020; Sabbah-Karkabi, 2022; Syailendra, Anastasia, & Putera, 2023). By narrowing its focus to the recognition of divorce and legal separation alone, the Convention facilitated broader acceptance among countries with diverse legal traditions. This pragmatic compromise enabled participation by states that might otherwise have resisted, including those with legal systems that do not recognize divorce, without requiring fundamental changes to their domestic family laws (Dwisana & Resen, 2021; Mujiburohman et al., 2023).

**Figure 1 Framework Legal Changes Related to Joint Property in Mixed Marriages**




The spider framework diagram illustrates the interrelated theoretical components underpinning the study of community property in mixed marriages within the Indonesian legal context. At the core of the framework is the concept of Community Property, which establishes the legal foundation for assets acquired during marriage. Extending from this core



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are four critical theoretical domains: Mixed Marriage, Private International Law, The Hague Convention 1968, and Indonesian Marriage Law. Each domain interacts dynamically to shape the legal interpretation and practical application of community property regulations. Mixed Marriage introduces complexities arising from differences in nationality, religion, and cultural background, while Private International Law provides mechanisms to address jurisdictional conflicts and determine applicable legal systems. The Hague Convention 1968 contributes an international dimension, facilitating the recognition of legal decisions across jurisdictions. Finally, Indonesian Marriage Law contextualizes these interactions within the national legal framework. Together, these interconnected elements form a comprehensive theoretical structure that supports legal analysis, highlights regulatory gaps, and informs the development of equitable solutions for property division in mixed marriage cases.

## RESEARCH METHODS

This study adopts a normative legal research approach, which constitutes a central methodology in legal scholarship, emphasizing the systematic analysis of legal norms that prevail within a society. This approach primarily focuses on examining legal texts, including statutes, regulations, legal doctrines, and judicial decisions (Disemadi, 2022). Normative legal research relies on a structured analysis of both primary and secondary legal sources, which collectively form the foundation of the legal system under investigation. Primary legal sources typically include statutory laws (lex), government and regional regulations, court judgments, and national legal policies. Secondary legal sources encompass academic literature, legal doctrines, and scholarly articles, which enrich the analysis and provide theoretical perspectives on the interpretation and application of legal norms (Diantha, 2017; Irianto, 2017; Tahir, 2023).

The main objectives of normative legal research are to explore, interpret, and clarify the content of applicable legal norms, as well as to analyze how these norms should be implemented in practice. This method aims to provide a clearer understanding of the meaning and scope of specific regulations, while also identifying potential inconsistencies, ambiguities, or gaps in the existing legal framework. Ultimately, normative research contributes to the development of recommendations for legal improvement and reform, ensuring that the legal system remains coherent and effective (Diantha, 2017; Sahrum, 2022; Wahidah, 2020). The types of legal materials utilized in this study consist of primary, secondary, and empirical legal materials. Primary legal materials include national laws such as the Indonesian Civil Code, family law regulations of other jurisdictions, relevant implementing regulations, jurisprudence, and



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international legal instruments—particularly the Hague Convention on Matrimonial Property Regimes. Secondary legal materials comprise peer-reviewed legal journal articles, textbooks, legal commentaries, reports from international organizations, legal encyclopedias, dictionaries, and bibliographies that provide theoretical and analytical perspectives (Diantha, 2017; Irianto, 2017; Tan, 2021). Empirical materials involve practical legal documents such as prenuptial agreements, statistical datasets, case studies, and structured interviews or surveys with key stakeholders. These materials offer valuable empirical insights into the practical implementation of joint property law within mixed marriages (Irianto, 2017; Nurhayati, Ifrani, & Said, 2021).

Data collection was conducted through an extensive review of legal literature, including statutory compilations, legal treatises, academic articles, and journal publications relevant to civil law. In addition, in-depth interviews were carried out with various legal practitioners—including lawyers, notaries, and judges—as well as legal scholars and individuals directly involved in civil law disputes. The interviews were designed to capture practical perspectives on the application and interpretation of joint property law in mixed marriages (Diantha, 2017; Tahir, 2023; Tan, 2021). Furthermore, the study examines a series of relevant legal cases that illustrate the practical application of civil law principles, particularly disputes concerning joint property, inheritance rights, and marriage agreements that have significant legal implications.

Finally, data analysis was performed using triangulation techniques, which involve validating research findings by cross-referencing data obtained from different sources and methods. This analytical strategy enhances the credibility and reliability of the findings by ensuring that conclusions are supported by consistent evidence across legal texts, scholarly literature, and empirical insights (Diantha, 2017; Irianto, 2017; Tahir, 2023).

## RESULTS AND DISCUSSION

### Arrangement of Joint Property in Mixed Marriages in Various International Civil Law Systems

The arrangement of joint property in mixed marriages is highly dependent on the legal system of each spouse's country of origin and their location of domicile. Some countries are more open to flexibility in the choice of law by allowing couples to choose the law of a particular country through a prenuptial agreement or international convention. For couples entering into mixed marriages, it is often advisable to prepare a written agreement so that property rights can be regulated more clearly.



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In Indonesia, after a husband and wife have tied themselves to a marriage relationship, from that moment on their rights and obligations become a whole unit between the husband and wife. An important factor in a marriage bond that can drive a married life is wealth to meet the needs of daily life. The regulation of joint property in mixed marriages across international civil law systems is a complex topic, as it involves various legal systems that may differ in regulating the rights and obligations of couples involved in inter-national marriages. In many cases, couples from different countries have significant differences in the regulation of marriage, property ownership, and other rights. Therefore, it is important to understand how the various international civil law systems regulate joint property in the context of mixed marriages and how practical solutions can be implemented to achieve justice for all parties involved.

One solution that can be implemented is to utilize the principle of "choice of law" which allows couples in mixed marriages to choose the law that will govern their joint property. Several countries have adopted this principle, which gives couples the freedom to choose the law that best suits their situation. This principle can be integrated into the Indonesian legal system to provide a fairer choice of law for mixed couples, as well as provide legal certainty about how joint property will be divided after divorce or death of one of the parties. Through International Law and Multilateral Conventions, the regulation of joint property in mixed marriages is an important issue because it involves differences in the legal systems of countries with different jurisdictions. In mixed marriages, one of the spouses usually has a citizenship or domicile in a different country from the other spouse. This raises the question of which law will regulate joint property in marriage, especially since various legal systems have different principles in regulating joint property ownership.

To address these differences, a number of multilateral conventions and international legal instruments have been formulated to provide guidance on the choice of law and jurisdiction in mixed marriages. One of the main conventions dealing with this is the 1978 Hague Convention on the Law Applicable to the Matrimonial Property Regime, which provides guidance on the disposition of joint property in mixed marriages. This convention allows couples to choose the law to be applied to their joint property, either based on the country of domicile or the country of citizenship of one of the spouses.

**The Perspective of Legal Justice Influences Changes or Reforms in Laws Related to Joint Property in Mixed Marriages**

Mixed marriages carried out in Indonesia must be guided by the current Marriage Law. Mixed marriages without a marriage agreement are



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very inhibiting in being able to own property (for example: land rights) during the marriage because of the rounding up of joint property which includes property of foreign citizens. Property produced during the marriage will become joint property of the husband and wife in other words that the concept of joint property which is property that can be reviewed from an economic and legal perspective, although both aspects are different from an economic perspective, but both are related to each other (Abdul Kadir Muhammad. A, 2000).

The provisions regarding the legal process of a marriage agreement that is guided by applicable laws are not only intended for mixed marriages but also for all marriages in general. Where the Constitutional Court's decision provides an opportunity for the parties in a marriage to submit a marriage agreement during the marriage period which aims to obtain their rights as citizens to own land in Indonesia.

The perspective of legal justice plays an important role in encouraging changes or legal reforms related to joint property in mixed marriages. In Indonesia, the aspect of legal justice is increasingly in the spotlight, especially when it comes to the rights of couples in mixed marriages involving Indonesian citizens (WNI) and foreign citizens (WNA). In mixed marriages, legal justice demands that the rights and obligations of the spouses can be accessed equally, without discrimination based on citizenship status. However, current legal regulations, such as restrictions on property ownership for foreign nationals, still pose challenges for mixed couples in accessing their full property rights.

This injustice has prompted demands for fairer legal reforms, so that couples in mixed marriages have equal access to joint assets, especially in terms of property ownership. Current legal provisions, which give foreign nationals only the right to use or use property without full ownership, often result in inequality. In the event of divorce or the death of one of the partners, foreign nationals can lose their rights to property, leading to injustice in terms of joint property ownership. More inclusive legal reforms are needed to address these obstacles and better guarantee the rights of foreign national couples. Changes in the law are also needed to protect the rights of children from mixed couples. Children of Indonesian and foreign couples often face uncertainty in inheritance rights, especially if their citizenship status is limited to one country. Legal justice demands that children's rights to their parents' joint property be protected, regardless of the parents' citizenship status. Reforms that consider inheritance rights for children from mixed couples can strengthen the protection of children's rights and fulfill the principles of justice.



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In mixed marriages, the principle of justice also demands recognition and respect for cultural diversity. Each spouse may have different legal and cultural backgrounds, which influence their views on the ownership and management of property. Fair legal reform should take this diversity into account by allowing spouses to choose or negotiate the law that will govern their property. This may mean introducing mechanisms such as prenuptial agreements or choosing a legal jurisdiction that best suits the needs and values of both spouses. Equitable legal reform also requires legal certainty. Couples in mixed marriages must have a clear understanding of their rights and obligations regarding joint property. This includes rules on the division of property in the event of divorce or death of one of the partners. Transparent and easy-to-understand legal reform will help reduce conflict and uncertainty, providing better protection for both parties.

Ultimately, just legal reform must be oriented towards protecting human rights. Every individual in a mixed marriage must have the right to be treated fairly and equally before the law, without discrimination. This includes the right to own and manage property, the right to freedom of religion and culture, and the right to protection from abuse or exploitation. In this context, legal reform must always take into account international standards on human rights, ensuring that national laws do not conflict with the principles of universal justice. Correlation of Joint Property Problems in Mixed Marriages with the Legal System in Indonesia. With joint property problems in mixed marriages in Indonesia reflecting challenges that arise from differences in legal systems, cultures, and procedures. Legal reforms that prioritize justice, gender equality, and harmonization with international law are urgently needed to overcome these challenges and provide better protection for couples in mixed marriages.

To achieve the goal of greater justice, Indonesia can carry out international cooperation to strengthen the global legal framework related to mixed marriages. Through this cooperation, Indonesia can learn best practices from other countries that have succeeded in creating a fair legal system for mixed couples, as well as strengthen its commitment to ratified international agreements, such as CEDAW and the Convention on the Rights of the Child. This will enrich Indonesia's perspective in formulating policies that are fairer, more harmonious, and based on the principles of universal justice. Overall, solutions related to changes or reforms to the law on joint property in mixed marriages must involve a careful adaptation process to the principles of international and national legal justice. By prioritizing gender equality, protection of individual rights, and recognition of international norms, Indonesia can create a legal system that



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not only protects couples in mixed marriages, but also promotes justice and welfare for all citizens.

**The Concept of Joint Property Related to Mixed Marriages is in Accordance with the Principles of Justice for Indonesian Citizen and Foreign Citizen Couples**

Arranging joint property in mixed marriages often faces challenges because it involves different legal jurisdictions between the countries of origin of each spouse. In Indonesia, the civil law system sets certain rules regarding joint property ownership, which may differ from the provisions in the country of origin of the foreign spouse. In practice, couples involved in mixed marriages often have to comply with complex rules regarding asset ownership, inheritance rights, and property division in the event of divorce.

From a social and cultural perspective, the arrangement of joint property in mixed marriages often faces various challenges that can affect the treatment received by foreign spouses. Strong cultural norms, societal views on the roles of husband and wife, and strong family ties can provide additional challenges for foreign spouses in understanding and accepting the system of joint property arrangements in Indonesia. Therefore, to achieve true justice in the arrangement of joint property for couples in mixed marriages, it is necessary not only to make adjustments in the formal legal aspects, but also to have a better understanding of the social and cultural context.

Joint property in the context of mixed marriages between Indonesian citizens (WNI) and foreign citizens (WNA) often raises questions regarding justice, especially since regulations in Indonesia impose quite strict restrictions on property ownership by WNA. The principle of justice in this relationship refers to balanced rights and obligations for both parties and protection of the property rights of both partners, both WNI and WNA, regardless of citizenship status. However, the application of this principle of justice has not been fully reflected in the rules on property ownership for WNA couples, especially in terms of land and property ownership in Indonesia, which is only permitted as a right of use for WNA, not a right of ownership.

Basically, the Indonesian Marriage Law, especially Article 35, states that property acquired during a marriage becomes joint property, unless otherwise stipulated through a prenuptial agreement. In the case of mixed marriages, foreign spouses still have the right to property acquired jointly during the marriage, but their rights are limited by applicable regulations regarding property ownership. This limitation sometimes creates injustice for foreign spouses, who contribute financially but do not have full



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ownership rights to certain assets owned jointly. The principle of justice is also compromised because the Indonesian legal system does not fully provide equal protection for foreign spouses in terms of property ownership. For example, in the case of divorce or death of one of the spouses, the foreign spouse risks losing full rights to assets jointly owned with the Indonesian spouse, especially if the assets are land or buildings. This creates uncertainty for foreign spouses, who do not have equal rights in ownership of important assets compared to Indonesian spouses.

Injustice also arises because foreign spouses can only access joint assets in the form of usage rights, which have a certain time limit and need to be extended periodically. While Indonesian spouses have full ownership rights to land and buildings, foreign spouses are only given limited usage rights. This is a challenge for couples in mixed marriages who want to ensure that ownership of joint assets remains guaranteed and protected in accordance with the principles of justice and equality. The joint property regulations implemented in Indonesia also do not fully take into account the rights of mixed-race couples. The principle of justice should allow foreign couples to have equal access to joint property, especially if they have made significant contributions to the acquisition of assets during the marriage. However, this limitation causes injustice in the division of property rights, because foreign couples do not have rights that are commensurate with the financial contributions and responsibilities they have in marriage.

In practice, this legal provision can prevent couples in mixed marriages from feeling secure in their relationships. For foreign couples, uncertainty in joint property ownership can create feelings of legal insecurity, because their rights are not fully guaranteed in situations involving valuable assets. This is contrary to the principle of justice that should protect both parties in a marital relationship, regardless of citizenship status. Meanwhile, the rules on prenuptial agreements provide a way for mixed marriage couples to independently regulate joint property ownership. However, not all couples realize the importance of a prenuptial agreement before marriage. In addition, in Indonesia, a prenuptial agreement is only valid if it is made and ratified before the marriage takes place, so couples who marry without this agreement cannot regulate it after marriage. This can be a barrier for foreign couples who may only realize the importance of the agreement after marriage.

The application of the principle of justice in mixed marriages must also consider the rights of the children of the couple. Children of mixed marriages have equal rights to joint property, but if the foreign spouse does not have full ownership rights to certain assets, the rights of their children



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may also be affected. Protection of children's rights in the inheritance of joint property should be one of the aspects prioritized to maintain the principle of justice in mixed marriages. Overall, the application of the principle of justice in the regulation of joint property for couples in mixed marriages is not fully in line with the values of equality and non-discrimination. The legal provisions in force in Indonesia still prioritize the protection of ownership for Indonesian citizens and provide strict limitations for foreign couples. To achieve true justice, the legal system in Indonesia needs to consider updating more inclusive regulations so that foreign couples in mixed marriages can feel secure and fair in terms of joint property ownership.

By improving this provision, it is hoped that Indonesian and foreign couples in mixed marriages can feel equal legal protection in property rights and access to joint property. This step will not only reflect the principles of justice desired in marriage, but will also support human rights and make Indonesia more inclusive in responding to the reality of globalization and increasingly complex relations between countries.

**Figure 2 Joint Property in Mixed Marriages in Various International Civil Lau Systems**






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The diagram illustrates the conceptual framework for arranging joint property in mixed marriages within various international civil law systems. At the core is the central issue of how joint property is managed when spouses come from different legal jurisdictions. Surrounding this are five key components. First, the Choice of Law and the Hague Convention 1978 provide an international legal basis for determining which jurisdiction governs property relations. Second, the Perspective of Legal Justice and Legal Reform highlights the need for fair and inclusive legal changes to accommodate mixed marriages. Third, the Correlation with the Indonesian Legal System underscores how international principles interact with domestic regulations. Fourth, the Principle of Justice for Indonesian and Foreign Spouses emphasizes equality and non-discrimination in property rights regardless of nationality. Finally, Challenges and Practical Solutions address the complexities couples face in practice and propose ways to harmonize different legal frameworks. Together, these elements form a comprehensive structure for analyzing and improving joint property arrangements in mixed marriages.

## CONCLUSION

The concept of joint property in mixed marriages faces challenges because it involves different legal systems between countries, which often create injustice for couples due to differences in rules regarding ownership, management, and distribution of assets. Discrimination against foreign spouses, such as restrictions on asset ownership, is one of the prominent obstacles. To overcome this problem, harmonization of international civil law is needed that prioritizes the principles of universal justice and equal rights. The development of a marriage agreement that is responsive to the phenomenon of globalization is also an important solution, allowing couples to design joint property arrangements that are fair and appropriate to their needs. Thus, inclusive legal reform and the application of international standards can provide better legal protection for couples in mixed marriages.

## BIBLIOGRAPHY

1) Andriani, Dian, Bambang Santoso, and Oksidelfa Yanto. (2020). "Pemisahan Harta Perkawinan Campuran Dan Akibat Hukumnya Jika Diwariskan Tanpa Wasiat Pada Anak Berkewarganegaraan Ganda." *Lex Specialis* 1 (1).



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2) Akbar, Ali, Anisah Lubis, Mey Nisa Putri, Miftahul Hasanah Habib, and Muhammad Febri Andinata. (2024). "Sejarah Pernikahan Campuran Di Indonesia." *Jurnal Pendidikan Tambusai* 8 (1):4448–57. https://doi.org/10.31004/jptam.v8i1.13066
3) Akter, Sayema, Chloe Williams, Animesh Talukder, Muhammed Nazmul Islam, Juanita Vasquez Escallon, Tania Sultana, Neha Kapil, and Malabika Sarker. (2022). "Harmful Practices Prevail despite Legal Knowledge: A Mixed-Method Study on the Paradox of Child Marriage in Bangladesh." *Sexual and Reproductive Health Matters* 29 (2). https://doi.org/doi:10.1080/26410397.2021.1885790
4) Agusta, Dika, Abdul Madjid, and Nurini Aprilianda. (2025). "Reforming Indonesian Criminal Law: Integrating Supervision, Punishment, And Rehabilitation For Restorative Justice." International Journal of Islamic Education, Research and Multiculturalism (IJIERM) 7(1):54–68. https://doi.org/doi:10.47006/ijierm.v7i1.434
5) Amin, Habibi Al, and Muhdi Muhdi. (2021). "Catch Marriage In Maqashid Al-Syari'ah And Indonesian Law Perspective." Shakhsiyah Burhaniyah: Jurnal Penelitian Hukum Islam 6(2):115–28. https://doi.org/doi:10.33752/sbjphi.v6i2.3948.
6) Ananda Putra, Krisna, and Diangsa Wagian. (2021). "Tinjauan Yuridis Perkawinan Pada Gelahang Dalam Perspektif Hukum Positif Indonesia." Private Law 1(2). https://doi.org/doi:10.29303/prlw.v1i2.268.
7) Auliya, Siti, Harmona Daulay, and Linda Elida. (2025). "Challenges Of KUA In Implementing Pre-Marriage Guidance As an Effort To Build Sakinah Families In Medan City." International Journal of Islamic Education, Research and Multiculturalism (IJIERM) 7 (1): 347–68. https://doi.org/doi:10.47006/ijierm.v7i1.414.
8) Awang, Azarudin, Ruhaizah Abdul Ghani, Razali Musa, and Azman Che Mat. 2022. "The Challenges of Mixed Marriage in Malaysia from Mualaf's Circle." Academic Journal of Interdisciplinary Studies 11(6). https://doi.org/doi:10.36941/ajis-2022-0162.
9) Bedner, Adriaan W., Sulistyowati Irianto, Jan Michiel Otto, and Theresia Dyah Wirastri. (2012). *Kajian Sosio-Legal*. Denpasar: Pustaka Larasan.
10) Bhattarai, Prakash C., Deepak R. Paudel, Tikaram Poudel, Suresh Gautam, Prakash K. Paudel, Milan Shrestha, Janes I. Ginting, and Dhruba R. Ghimire. 2022. "Prevalence of Early Marriage and Its Underlying Causes in Nepal: A Mixed Methods Study." Social Sciences 11(4). https://doi.org/doi:10.3390/socsci11040177.



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11) Diantha, I. Made Pasek. (2017). *Metodologi Penelitian Hukum Normatif Dalam Justifikasi Teori Hukum*. Jakarta: Prenada Gramedia Groub.
12) Disemadi, Hari Sutra. (2022). "Lenses of Legal Research: A Descriptive Essay on Legal Research Methodologies." *Journal of Judicial Review* 24(2):289–304. https://doi.org/10.37253/jjr.v24i2.7280
13) Dwisana, I. Made Arya, and Made Gde Subha Karma Resen. 2021. "Pembuktian Harta Bersama Dalam Perceraian Perkawinan Campuran Tanpa Perjanjian Kawin Di Indonesia." Acta Comitas 6(03). https://doi.org/doi:10.24843/ac.2021.v06.i03.p8.
14) Gama, Villa Satya. 1998. "Kekuatan Hukum Pembuktian Perjanjian Pemisahan Harta Yang Dibuat Setelah Perkawinan Campuran Guna Mempertahankan Hak Milik Atas Properti." *Brawijaya Law Student Journal.https://hukum.studentjournal.ub.ac.id/index.php/hukum/article/view/1998*
15) Glazer-Eytan, Yonatan, and Mercedes García-Arenal. 2020. "Mixed Marriage, Conversion, and the Family: Norms and Realities in Pre-Modern Iberia and the Wider Mediterranean." Mediterranean Historical Review 35(1). https://doi.org/10.1080/09518967.2020.1741231
16) Haidar, Ahmad Fadhil, Rimeltado Nur Ahmad, R. S. Hapsari, R. Natanael, and RLSN Sukmawati. 2023. "Tantangan Hukum Dan Aspek-Aspek Multikultural Dalam Pernikahan Internasional." *Causa: Jurnal Hukum Dan Kewarganegaraan* 1(6):1–10. https://doi.org/10.3783/causa.v1i6.8800
17) Hetharie, Y. 2019. "Nominee Agreement as a Means of Controlling Land Ownership Rights by Foreign Citizens (WNA) According to the Civil Code." *Sasi* 25(1):27–36. https://doi.org/10.47701/ijlle.v5i1.3836
18) Irianto, Sulistyowati. 2017. "Metode Penelitian Kualitatif Dalam Metodologi Penelitian Ilmu Hukum." *Jurnal Hukum & Pembangunan* 32 (2) https://doi.org/doi:10.21143/jhp.vol32.no2.1339.
19) Kurniawansyah, E., A. Fauzan, and E. Tamalasari. 2021. "Implications of Early Marriage on Family Harmony in Sumbawa." *Journal of Social and Diversity Education* 8(1).
20) Lowe, Mat, Mamsamba Joof, and Bomar Mendez Rojas. 2020. "Social and Cultural Factors Perpetuating Early Marriage in Rural Gambia: An Exploratory Mixed Methods Study." F1000Research 8. https://doi.org/doi:10.12688/f1000research.21076.1.
21) McClean, David. 2023. "The Transfer of Proceedings in International Family Cases." *Journal of Private International Law* 19(1):1–24. https://doi.org/doi:10.1080/17441048.2023.2189072.
22) Megiani, Ni Made, Nur Mohamad Kasim, and Waode Mustika. 2023.



This work is licensed under a Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International License.

"Perbandingan Hukum Atas Hak Anak Yang Berkewarganegaraan Ganda Akibat Korban Cerai (Komparatif BW Dan Privaatrecht)." *Journal of Comprehensive Science* 2(2):653–64.

23) Mujiburohman, Dian Aries, Rohmat Junarto, M. Nazir Salim, Dwi Wulan Pujiriyani, Westi Utami, and Dwi Wulan Titik Andari. 2023. "The Issues of Land Tenure in Mixed Marriage." Jurnal Ilmiah Peuradeun 11(1). https://doi.org/doi:10.26811/peuradeun.v11i1.818.
24) Nuraudya, ES, and Y. Haryanti. 2017. *Negotiation of Cultural Values in Mixed Marriage Couples (A Qualitative Descriptive Study of Negotiation of Cultural Values of Mixed Marriage Couples Between Indonesians and Westerners)*. Muhammadiyah University of Surakarta.
25) Nurhayati, Yati, Ifrani Ifrani, and M. Yasir Said. 2021. "Metodologi Normatif Dan Empiris Dalam Perspektif Ilmu Hukum." *Jurnal Penegakan Hukum Indonesia* 2 (1). https://doi.org/doi:10.51749/jphi.v2i1.14
26) Prayantama, Hamed, Tunggul Anshari, and Sigit Nur Rachmat. 2025. "Justice Perspective on Land and Building Acquisition Duty Under Government Regulation No. 35/2023." *International Journal of Islamic Education, Research and Multiculturalism* (IJIERM) 7(2):741–58. https://doi.org/doi:10.47006/ijierm.v7i2.490.
27) Paradikma, Inka Rosellia, and Elan Jaelani. 2024. "Pengaturan Adopsi Anak Antar Negara Melalui Perspektif Hukum Perdata Internasional." *Causa: Jurnal Hukum Dan Kewarganegaraan* 2 (8). https://doi.org/10.3783/causa.v2i9.2461
28) Phiri, Million, Emmanuel Musonda, Liness Shasha, Vincent Kanyamuna, and Musonda Lemba. 2023. "Individual and Community-Level Factors Associated with Early Marriage in Zambia: A Mixed Effect Analysis." BMC Women's Health 23(1). https://doi.org/doi:10.1186/s12905-023-02168-8.
29) Rosidini, Arnis Rachmadhani, Lilam Kadarin Nuriyanto, Muh. Isnanto, and Titi Isnaini Fauzah. 2022. "Marriage Guidance Program At Mayong District Office Of Religious Affairs, Jepara Regency, Indonesia." *Journal of Southwest Jiaotong University* 57(4):1–12. https://doi.org/doi:10.35741/issn.0258-2724.57.4.1.
30) Sabbah-Karkabi, Maha. 2022. "'Marriage Was Not an Option': Ethnoreligious Mixed Marriage in Israel." Ethnic and Racial Studies 45(1). https://doi.org/doi:10.1080/01419870.2021.1905864.
31) Sahrum M. (2022). *Pengantar Metodologi Penelitian Hukum: Kajian Penelitian Normatif, Empiris, Penulisan Proposal, Laporan Skripsi Dan Tesis*. Riau: Dotplus Publisher.
32) Susanto, D. (2011). *A Complete Analysis of the Problem of Joint Property*. 1st



This work is licensed under a Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International License.

ed. Yogyakarta: Pustaka Yustisia.
33) Sutini, Wiwin, and Putu Eka Trisna Dewi. 2021. "Pembagian Harta Bersama Pasca Perceraian Terhadap Kontribusi Isteri Sebagai Pencari Nafkah (Studi Komparasi Di Australia, Malaysia Dan Jepang)." *Jurnal Aktual Justice* 6(2):121–39 https://doi.org/10.70358/aktualjustice.v6i2.768
34) Shi, Hua. 2022. "'My Last Husband and Marriage:' The Impact of Inheritance Disputes on Chinese Immigrants' Widowhood in the United States." Ageing International 47(4). https://doi.org/doi:10.1007/s12126-021-09456-4.
35) Subagiyo, Dwi Tatak, and Desi Nurkristia Tedjawati. 2022. "The Explanation Of Child And Wife's Inheritance Rights As A Result Of Siri Legitimate Marriage." *Cepalo* 6(1). https://doi.org/doi:10.25041/cepalo.v6no1.2589
36) Suraya, Nabilla Ayu, Akhmad Khisni, and Munsharif Abdul Chalim. 2021. "Research on Inheritance for Children from Sirri Marriage Based on the Compilation of Islamic Law." Sultan Agung Notary Law Review 3(1). https://doi.org/doi:10.30659/sanlar.3.1.48-55.
37) Syailendra, Moody Rizqy, Michelle Sharon Anastasia, and Fauzan Ravinda Putera. 2023. "Analisa Perkawinan Beda Agama Di Indonesia." As-Syar'i: Jurnal Bimbingan & Konseling Keluarga 6(1). https://doi.org/doi:10.47467/as.v6i1.4452.
38) Tahir, Rusdin. 2023. Metodologi Penelitian Bidang Hukum: Suatu Pendekatan Teori Dan Praktik.
39) Tan, David. 2021. "Metode Penelitian Hukum: Mengupas Dan Mengulas Metodologi Dalam Menyelenggarakan Penelitian Hukum." Nusantara: Jurnal Ilmu Pengetahuan Sosial 8(2). https://doi.org/10.31604/jips.v8i8.2021.2463-2478.
40) Wahidah, Zumrotul. 2020. "Metodologi Hukum Islam Perspektif Al-Ghazali." Media Keadilan: Jurnal Ilmu Hukum 11(2). https://doi.org/doi:10.31764/jmk.v11i2.2833.
41) Wibawa, I. Putu Sastra, I. Putu Gelgel, and I. Putu Sarjana. 2019. "Pada Gelahang Marriage: A Legal Pluralism Perspective." International Journal of Interreligious and Intercultural Studies 2 (1). https://doi.org/doi:10.32795/ijiis.vol2.iss1.2019.312.
42) Zuraida, Lukia, Made Budiarsa, I. Ketut Darma Laksana, and I. Wayan Simpen. 2020. "Language Choice of Balinese and Japanese Mixed Marriage Children." Journal of Language Teaching and Research 11(4). https://doi.org/doi:10.17507/jltr.1104.11.



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